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OFFICE OF PETITIONS

In re Application of	:	
Andre T. Barron, et al.	:	
Application No. 09/676,380	:	ON PETITION
Filed: September 29, 2000	:	
Attorney Docket No. 99-057	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed June 8, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704. **No additional petition fee is required.**

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1).

A decision dismissing the previous petition was mailed to applicant on April 8, 2005, which informed petitioner that the concurrently filed amendment did not place the application in condition for allowance. An Advisory Action from the Examiner explaining in detail the reason for not accepting the amendment accompanied said decision.

Based on the statements presented, it appears (though not confirmed) that petitioner had a conversation with the Examiner where it was implied that the amendment submitted would place the application in condition for allowance. Unfortunately, there is nothing in the written record that would suggest such. If the Examiner inferred that the amendment was acceptable without providing written notice, petitioner should not rely on oral advice from USPTO employees. See MPEP 711.03(c).

Petitioner also requests that the Office “enter its Notice of Appeal...” After a thorough search of the file record, there is no indication that petitioner has submitted a Notice of Appeal. While the petition references the alternative Notice of Appeal, no such Notice was found with the petition. In view of 37 CFR 1.4(c), “...each distinct subject, inquiry, or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.” Therefore, petitioner must provide a separate Notice of Appeal and required fee. If petitioner so desires, a copy of the Notice of Appeal form (form PTO/SB/31) may be obtained at the Office’s website, www.uspto.gov.

Further correspondence with respect to this matter should be addressed as follows:


By Mail:

Mail Stop PETITION
Commissioner for Patents
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By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (703) 872-9306.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223


Marianne E. Jenkins
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy